

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
County of Charles, Maryland)	WT Docket No. 02-55
and Sprint Nextel Corporation)	
)	
Mediation No. TAM-12003)	

MEMORANDUM OPINION AND ORDER

Adopted: September 10, 2007

Released: September 10, 2007

By the Associate Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we address a case referred to us for *de novo* review from Wave 1, Phase 2 mediation by the 800 MHz Transition Administrator (TA) involving a dispute between Charles County, Maryland (County) and Sprint-Nextel Corporation, Inc. (Sprint).¹ This case concerns the reconfiguration of the County's 800 MHz communications system. The dispute relates to certain estimated planning-related costs for the County and its consultant, RCC Consultants (RCC). The County seeks a total of approximately \$299,000 in planning funds, of which approximately \$80,102.16 is in dispute.² Based on our *de novo* review of the mediation record, we find that the County is entitled to compensation from Sprint for the majority of its claimed internal planning costs and RCC's proposed planning-related consultant services as well as all of its claimed negotiation and mediation support expenditures.

II. BACKGROUND

2. Charles County operates an eight-channel trunked simulcast system and a three-channel conventional simulcast system, licensed under call signs WPZH908, WPZI729, WPZR834, and WPZR835.³ The County's system includes eleven fixed sites, nine of which the County leases from American Tower Corporation (ATC), and 1725 mobile units.⁴ The County has consolidated most of its radio operations on the system, which is used by the County Sheriff, Fire/EMS, Emergency Management, Emergency Services, Emergency Communications, Utilities, Planning and Growth Management, Community Services, Public Facilities/Works, and Animal Control.⁵ The eight-channel trunked system serves as the County's primary Fire/EMS alerting mechanism.⁶ The system also supports interoperability with NPSPAC Regions 20 and 42 and the National Capital Region.

¹ Recommended Resolution, TAM-12003 at 1 (filed February 26, 2006) (RR).

² Proposed Resolution Memorandum of Charles County, Maryland, TAM 12003 at 13 and n.21 (filed Oct. 13, 2006) (County PRM).

³ RR at 1.

⁴ *Id.* at 5-6.

⁵ County PRM at Exhibit B.

⁶ *Id.*

3. The *800 MHz Report and Order* and subsequent orders in this docket require Sprint to negotiate a Frequency Relocation Agreement (FRA) with each 800 MHz licensee that is subject to rebanding.⁷ To ensure meaningful FRA negotiations, licensees may seek initial funding for planning activities by negotiating a Planning Funding Agreement (PFA). On February 1, 2006, the County and Sprint commenced PFA negotiations regarding planning for retuning of the system. The case was referred to mediation as part of Wave 1 Stage 2 on July 26, 2006. During mediation, the County and Sprint agreed on all PFA issues except for certain estimated planning-related costs for the County and RCC. On February 26, 2007, after mediation proved unsuccessful on these issues, the mediator referred the matter to PSHSB for *de novo* review and resolution, submitting the record in the case as well as a Recommended Resolution (RR).⁸ On March 12, 2007, the County submitted its statement of position, as did Sprint.⁹

4. The County seeks approximately \$299,000 in total planning funds, of which \$80,102.16 is in dispute. We note that in PFAs that have been approved to date, the median planning funding amount requested by licensees for systems comparable in size to the County's system (1001-2000 mobile and portable units) is \$79,738, and the 75th percentile amount of these planning funding requests is \$118,770.¹⁰ Thus, the County requests almost four times the median amount of funding and almost three times as much as the 75th percentile compared to licensees of similarly-sized systems. This large deviation warrants careful scrutiny of these disputed costs.

III. DISCUSSION

A. Standard of Review

5. As an initial matter, the Commission's orders in this docket assign to the County the burden of proving that the funding it has requested is reasonable, prudent, and the "minimum necessary to provide facilities comparable to those presently in use."¹¹ We note that the Commission has recently clarified this standard for purposes of determining whether licensee relocation costs are the "minimum necessary" to accomplish rebanding, and therefore must be paid by Sprint.¹² In the *Rebanding Cost Clarification Order*, the Commission stated that the term "minimum necessary" cost does not mean the absolute lowest cost under any circumstances, but the "minimum cost necessary to accomplish rebanding in a reasonable, prudent, and timely manner."¹³ This standard takes into account not just cost but all of the objectives of the proceeding, including timely and efficient completion of the rebanding process, minimizing the burden rebanding imposes on public safety licensees, and facilitating a seamless transition

⁷ See Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, *Fifth Report and Order*, *Fourth Memorandum Opinion and Order*, and *Order*, 19 FCC Rcd 14969, 15021-45, 15069 ¶¶ 88-141, 189 (2004) (*800 MHz Report and Order*); Improving Public Safety Communications in the 800 MHz Band, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004) (*800 MHz Supplemental Order*); and Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 20 FCC Rcd 16015 (2005) (*800 MHz MO&O*).

⁸ The parties also disputed whether some of the County's internal and outside legal costs involved in the negotiation of the FRA should be included in the cost estimate of the PFA. RR at 12-13. This issue is no longer in dispute and we need not address it further. RR at 22; Sprint SOP at 12 n. 24.

⁹ Statement of Position of Charles County (Mar. 12, 2007) TAM 12003 (County SOP); Statement of Position of Sprint Communications, Inc., TAM 12003 (Mar. 12, 2007) (Sprint SOP).

¹⁰ See http://800ta.org/content/PDF/other/Planning_Funding_Cost_Metrics.pdf at 1.

¹¹ *800 MHz Report and Order*, 19 FCC Rcd at 15074 ¶ 198.

¹² Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 22 FCC Rcd 9818 (2007) (*Rebanding Cost Clarification Order*).

¹³ *Id.* at 9821 ¶ 6.

that preserves public safety's ability to operate during the transition.¹⁴

6. Our review of costs is also influenced by our experience in reviewing the costs incurred by other similarly-situated 800 MHz licensees in the planning process. In this regard, we have the benefit of data from the TA that can provide us with cost metrics for approved planning funding agreements for systems of varying size and complexity.¹⁵ We stress that these metrics are only one guiding factor underlying our analysis of the reasonableness of planning costs. Depending on the facts the licensee has established in the record, we may disapprove costs that fall below the guidelines or, conversely, approve costs that exceed the guidelines. We now turn to the specific costs that are in dispute.

B. RCC Consultant Costs

7. The County seeks \$84,060 for 458 hours of work by RCC on a variety of planning tasks, including expenses. We approve most of the County's request, with certain adjustments discussed below.

8. *County Position.* The County proposes to use a "tripartite" project management structure in which County personnel, RCC, and Motorola, Inc., the County's primary vendor, will collaborate on planning tasks, with the County assuming a "supervisory" role in most activities. The County states that it used the same approach working with RCC and Motorola when it originally constructed its 800 MHz communications system. Within this tripartite structure, the County's request for 458 hours of planning work by RCC breaks down as follows:

- Infrastructure Inventory – \$11,480 for 70 hours of work by RCC to assist in the inventory of the County's fixed sites.¹⁶
- Subscriber Unit Inventory – \$15,840, for 100 hours of work by RCC to assist in the inventory of the County's radios and \$1,940 in RCC expenses.¹⁷
- Reconfiguration Plan Design and Retune/Reprogram/Replace Determination – \$23,250 for 138 hours of work by RCC to assist in the design of the reconfiguration plan and the determination of whether equipment should be retuned, reprogrammed, or replaced; and \$1,160 in RCC expenses.¹⁸
- Frequency Analysis – \$2,880 for 18 hours of work by RCC to complete a frequency analysis.¹⁹
- Project Management – \$25,520 for 132 hours of work by RCC for project management and \$1,990 in expenses.²⁰

9. *Sprint Position.* Sprint proposes to reduce these RCC hours from 458 to 254 hours. Sprint does not dispute that each of the tasks listed above is needed for planning, but Sprint argues that the County's proposal will lead to inefficiency and duplication in the work performed by the County, Motorola, and RCC.²¹ With respect to most of the tasks, Sprint argues that Motorola should assume a

¹⁴ *Id.* at ¶ 8.

¹⁵ See http://800ta.org/content/PDF/other/Planning_Funding_Cost_Metrics.pdf

¹⁶ Proposed Resolution Memorandum of Sprint Nextel, Corp., TAM 12003 App. 12 at 5-7 (filed Oct. 2, 2006) (Sprint PRM); RR at 6.

¹⁷ Sprint PRM App. 12 at 7; RR at 8.

¹⁸ *Id.* 11 at 1; RR at 9.

¹⁹ Sprint PRM, App. 11 at 1.

²⁰ *Id.*; RR at 20.

²¹ Sprint SOP at 3.

leadership role and that RCC should have a much more limited role than the County has proposed.²²

10. *Mediator Recommendation.* The mediator agreed with the County that the County is entitled to determine how work will be apportioned among its own staff, Motorola, and RCC, provided that it avoids duplication of effort. The mediator found some indication of duplication in the County's planning proposal, but found it difficult to distinguish between duplicative activities and activities involving review and verification of the work of others.²³ Accordingly, the mediator attempted to pro-rate the request based on what he regarded as each party's overall level of contribution to the project. Based on this approach, the mediator recommended compensating RCC for 337.6 of the 458 hours requested for combined work on the above-listed tasks.²⁴

11. *Decision.* We approve the County's request in full with respect to infrastructure inventory, subscriber inventory and frequency analysis. We approve the request in part with respect to the remaining listed tasks. The County is entitled to retain RCC as a separate consultant to assist it in planning activity, rather than relying exclusively on its vendor.²⁵ In addition, the County is entitled to decide how tasks will be apportioned between internal staff, RCC, and Motorola, provided that it reasonably avoids duplication of effort. With respect to some of the disputed tasks, we find that standard to be met here. With respect to other disputed tasks, we find sufficient evidence of duplication that a reduction of the amount requested is warranted. We address each of the disputed tasks in turn.

12. *Infrastructure Inventory.* We conclude that the County has provided sufficient justification for the estimated 70 hours of work it requests for RCC's effort. The County request provides for RCC personnel to accompany Motorola during the inventory of the County's fixed sites and to identify any fixed equipment that must be reconfigured that is outside the scope of Motorola's contractual obligations. The County contends that 70 hours should be budgeted for RCC to perform this task, while Sprint proposes 27 hours on the grounds that Motorola, which is separately budgeted for approximately 58 hours, should be primarily responsible for this work. We approve the County request in full. While 70 hours of RCC effort appears high relative to the Motorola and County effort, accurately inventorying the County's infrastructure is critical to ensuring a smooth and timely transition. We believe that the County has made a reasonable showing that RCC needs to participate directly in the inventory rather than merely reviewing Motorola's work.²⁶ In addition, RCC will be performing inventory tasks that are outside the scope of Motorola's contractual obligations.²⁷ For this purpose, it is reasonable to budget sufficient time for RCC to visit the system's fixed sites, and to review portions of the County system that will not be assessed by Motorola.

13. *Subscriber Unit Inventory.* We conclude that the County has provided sufficient justification for the 100 hours estimated for RCC's effort. The County requests \$15,840 for 100 hours of RCC time (as well as \$2,280 for 60 hours of County staff time) to inventory the system's 1725 mobile and

²² Sprint PRM at 5-6; RR at 3; Sprint SOP at 4.

²³ RR at 4, 14.

²⁴ RR at 22-23.

²⁵ City of Naperville, Illinois, WT Docket No. 02-55, *Memorandum Opinion and Order*, DA 07-2615 at ¶ 12 (PSHSB rel. June 14, 2007).

²⁶ RCC will review fleet maps, templates, and/or talk-group configuration of the system and will work with the County and Motorola to determine whether this information is up-to-date and correct, and this information will be used to avoid operational disruption during rebanding. Sprint PRM, App. 12 at 5.

²⁷ The RCC Statement of Work states that "[a] careful review of system documentation is required to allow identification of risks in the rebanding process and to construct a cutover plan and process that takes into account the configuration of the system infrastructure prior to rebanding." *Id.*, App. 12 at 4. RCC will also "identify sub-systems and ancillary systems that are not to be assessed by Motorola such as Bi-directional amplifiers, in-building coverage solutions, vehicular repeater systems and other special items." *Id.*, App. 12 at 4-5.

portable units.²⁸ Sprint contends that RCC's time should be reduced to 88 hours, resulting in a cost of \$13,840 for RCC's effort.²⁹ The mediator approved 88 hours for this task citing apparent duplication of effort.³⁰ We approve the County request in full. RCC's effort goes beyond mere assistance and review and extends to actively collaborating with the County in managing the inventory process, which is rendered more complex by the variety of radios and agencies involved. In addition, the difference between the amount sought by the County and the amount offered by Sprint for this task is approximately \$2,000. The Commission has made clear in the *Rebanding Cost Clarification Order* that under such circumstances, it is appropriate for Sprint to pay such costs rather than to spend more substantial resources on prolonged mediation.³¹ Accordingly, we approve the County's full request.

14. Reconfiguration Plan Design and Retune/Reprogram/Replace Determination. We conclude that the County has not provided sufficient justification for the 138 hours estimated for RCC's effort. The County requests \$23,250 for 138 hours of work by RCC to assist in the design of the reconfiguration plan and the determination of whether equipment should be retuned, reprogrammed, or replaced.³² Sprint objects to these requests as duplicative of work that will be performed by Motorola, which is budgeted to spend 144 hours (\$25,200) for reconfiguration plan design and 42 hours (\$7,350) on the retune/reprogram/replace (RRR) determination.³³ Sprint offered 80 hours for RCC's work on these tasks.³⁴ The County responds that the plan design work performed by RCC is not duplicative of Motorola's work, because the plan designed by RCC will integrate equipment and requirements that Motorola might overlook due to inadvertence or unfamiliarity, or simply because the equipment at issue was not installed by Motorola.³⁵ The County also contends that its proposed "collaborative" approach to planning will enable RCC to act as a "backstop" to Motorola and to cover areas not necessarily reflected in the Motorola contract.³⁶

15. We are not persuaded by the County's claim that its proposed approach avoids duplication. We do not question the County's right to employ both Motorola and RCC in the plan design process, but the County has not made clear why RCC should be budgeted for nearly as many hours of plan design as Motorola if its purpose is to be a "backstop" to Motorola. Moreover, while it may be reasonable for RCC to develop elements of the reconfiguration plan that do not involve Motorola equipment, we are not persuaded that both RCC and Motorola need to be heavily involved in elements of planning that clearly pertain to the Motorola elements of the system, such as the determination whether radios should be retuned, reprogrammed, or replaced. In fact, Motorola has developed standardized "RRR" recommendations for each of its radio models, which reduces the need for detailed analysis at the individual licensee level. Based on these factors, we conclude that the County's request contains duplication in the apportionment of work between RCC and Motorola. Accordingly, we reduce RCC's hours to 80 for this task.

16. Frequency Analysis. We conclude that the County has provided sufficient justification

²⁸ *Id.*, App. 12 at 7 and App. 11 at 1.

²⁹ *Id.* App. 11 at 1.

³⁰ RR at 16.

³¹ *Rebanding Cost Clarification Order*, 22 FCC Rcd at 9820 ¶ 9.

³² Sprint PRM App. 11 at 1.

³³ *Id.*

³⁴ Sprint PRM at 14. The County also requests \$3,360 for 20 hours of work by RCC to assist in interoperability planning, which Sprint does not appear to challenge. In the absence of any disputed issue, we consider this request to be approved.

³⁵ County SOP at 4.

³⁶ *Id.*

for the 18 hours requested for RCC's effort. RCC proposes to spend 18 hours to collect copies of the County's radio frequency licenses and to collect information on other occupants of fixed antenna sites used by the County.³⁷ Based on its experience, Sprint offered 9 hours, which the mediator endorsed.³⁸ We approve the County's request. First RCC will be solely responsible for this task and therefore it is appropriate to budget sufficient time for RCC to complete this task. Second, the difference between the amount sought by the County and the amount offered by Sprint for this task is approximately \$1,440. While RCC could arguably accomplish this task in less time, we believe it is appropriate for Sprint to pay such costs rather than to spend more substantial resources on prolonged mediation over an otherwise *de minimis* cost estimate.

17. Project Management. We conclude that the County has not provided sufficient justification for the 132 hours requested for RCC's effort. The County project management estimate includes 132 hours for project management activities by RCC during the planning phase, as well as 114 hours for Motorola.³⁹ Sprint offers to fund all of Motorola's proposed hours, but 50 hours for RCC and half of RCC's associated expenses.⁴⁰ Sprint argues that Motorola's SOW states that Motorola will assign a Project Manager that will oversee the project plan for the rebanding effort to ensure a smooth execution of deliverables and that the County's requirements are met.⁴¹ Even if RCC is to collaborate with Motorola, Sprint argues that RCC's effort should not significantly exceed Motorola's effort. We agree to the extent discussed here. As stated above, the County is entitled to employ a tripartite project management structure.⁴² In that connection, we are prepared to afford the County some flexibility with respect to budgeting for project management, provided the hours proposed are reasonable in proportion to the overall amount of planning hours proposed for the project. In this case, Sprint and the County have agreed to 114 hours of work by Motorola. We find the 132-hour figure for RCC's contribution to be excessive in proportion to the amount of hours for Motorola's effort, which appears to encompass a broader set of responsibilities than RCC.⁴³ Therefore, we will approve 90.6 hours for RCC's participation in this task, as recommended by the mediator.⁴⁴ The County may also reapportion the total program management time between RCC and Motorola.

C. County Costs

18. The County requests a total of \$69,582.40 for 1310 hours of work by internal staff on several disputed planning tasks, including expenses. We approve the County's request in full as discussed below.

19. County Position. The County's request for 1310 hours of planning work by internal staff breaks down as follows:

- Reconfiguration Plan Design and Retune/Reprogram/Replace Determination – \$23,750 for 500 hours of work to assist in the reconfiguration design and RRR determination as well as \$6,150 in County expenses.⁴⁵

³⁷ Sprint PRM, App. 11 at 1.

³⁸ RR at 13.

³⁹ Sprint PRM App. 11 at 1; RR at 20.

⁴⁰ *Id.* at App. 11 at 1.

⁴¹ Sprint PRM at 15.

⁴² See ¶ 11 *supra*.

⁴³ Sprint PRM App. 9 at 11, App. 12 at 27-29.

⁴⁴ RR at 22.

⁴⁵ Sprint PRM App. 12 at 24; RR at 9.

- Interoperability Planning -- \$16,700 for 390 hours of work on regional interoperability planning and other coordination.⁴⁶
- Project Management – \$22,982.40 for 420 hours of project management work by County internal staff.⁴⁷

The County argues that it has the lead responsibility for each of these aspects of rebanding and that its proposed allocation of internal staff time will further its “collaborative” approach with RCC and Motorola, which the County has applied successfully in the past.⁴⁸

20. *Sprint Position.* Sprint argues that the high number of hours requested by the County for these tasks appears duplicative.⁴⁹ Sprint further argues that Motorola should assume a leadership role in these tasks with the County, and RCC assuming a less time-intensive supporting or supervisory role.⁵⁰

21. *Mediator Recommendation.* The mediator recommended that the Commission find that the County is entitled to 570 hours for plan design, RRR determination, and interoperability planning, and 222 hours for project management.⁵¹ The mediator found that the County’s proposal included a high number of hours devoted to coordination meetings attended by multiple County personnel. The mediator found this element of the County’s request to be disproportionate relative to the total planning effort and that many of these meetings appeared to be duplicative.

22. *Decision.* As discussed in more detail below, we approve the County’s requests for reconfiguration plan design, RRR determination, interoperability planning, and program management. In assessing the record, we give reasonable deference to a public safety licensee’s decisions concerning internal staffing.⁵² Public safety licensees—particularly in smaller jurisdictions such as the County—typically have limited internal resources to address the multiple demands on their time imposed by the rebanding process. However, licensees must still demonstrate that their overall internal planning costs are reasonably related to the administrative burdens that are imposed by the planning process.

23. Reconfiguration Plan Design and Retune/Reprogram/Replace Determination. We conclude that the County has provided sufficient justification for the 500 hours requested for internal staff. The County requests \$23,750 for internal staff work on these tasks. Although the requested number of hours (500) is high, we approve the request based on several factors. First, the planning process must take into account that rebanding the County’s system is relatively complex from a technical perspective because it is a simulcast system.⁵³ Thus, the reconfiguration plan must provide for the County’s technicians to work in a synchronized fashion to reconfigure each channel and minimize disruption.⁵⁴ The plan design must also take into account the age of the system and the reconfiguration process chosen, and significant modifications and design changes may need to be integrated into the plan to effect the

⁴⁶ Sprint PRM App. 12 at 24.

⁴⁷ *Id.* App. 11 at 1.

⁴⁸ RR at 9.

⁴⁹ *Id.* at 10.

⁵⁰ *Id.* at 11.

⁵¹ *Id.* at 20, 22.

⁵² See State of Maryland, WT Docket No. 02-55, *Memorandum Opinion and Order*, 22 FCC Rcd 10979, 10985 ¶ 18 (PSHSB 2007); City of Manassas, Virginia, WT Docket No. 02-55, *Memorandum Opinion and Order*, 22 FCC Rcd 8526, 8530 ¶ 14 (PSHSB 2007).

⁵³ As a general matter simulcast systems are more difficult to reconfigure than non-simulcast systems, because the radio signal must be fine-tuned for amplitude and phasing characteristics at each site to ensure that audio quality is intelligible and useable in areas with overlap. Sprint PRM at App. 2.

⁵⁴ *Id.*

necessary reconfiguration.⁵⁵

24. Second, planning for rebanding of the County's system is complex from an administrative perspective. As noted above, the County has consolidated the radio operations of numerous county agencies on the system.⁵⁶ The system also serves as the County's primary Fire/EMS alerting mechanism.⁵⁷ The County must take these factors into account in the planning process to ensure that all of the user agencies' needs are accounted for during the transition.⁵⁸

25. Interoperability Planning. We conclude that the County has provided sufficient justification for the 390 hours requested for interoperability planning. The County requests \$16,700 for 390 hours of work on regional interoperability planning and other coordination.⁵⁹ Though Sprint originally supported all of the County's proposed costs for interoperability concerns, Sprint objects to what it contends is an unexplained increase of 120 hours for internal staff time.⁶⁰ The County contends that it has not increased its request for interoperability hours, and that Sprint is reacting to a formatting change in the presentation of its estimate.⁶¹ We approve this request based on the importance of interoperability planning to successful rebanding of this system. The County's system is part of an interoperable network of systems in Regions 20 and 42 and in the National Capitol Region, so interoperability issues are likely to arise in the planning process.⁶² It is also important that the County coordinate closely with its interoperability partners in order to ensure a seamless transition. We regard this expense as reasonably related to the administrative burden imposed on the County by the rebanding process, and therefore give deference to the County on this issue.

26. Project Management. We conclude that the County has provided sufficient justification for the 420 hours requested for project management. The County requests \$22,982.40 for 420 hours of work by County internal staff on project management.⁶³ The time requested consists primarily of County staff participation in (1) weekly project management meetings with RCC and Motorola (224 hours) and (2) internal meetings with "County stakeholders and elected officials" (196 hours).⁶⁴ We approve the County's request in full. We agree with the County that participation in weekly project management meetings is reasonably necessary to "discuss project scheduling, project administration, cost controls, resource allocations, status reports, risk management activities, and overall project progress."⁶⁵ The County's core rebanding team will participate in these meetings and collectively represent all emergency service agencies, including law enforcement and fire/EMS/rescue.⁶⁶ We believe that this element of the County's project management request is reasonable to ensure that the County's interests are accurately, efficiently, and effectively represented in these meetings. Accordingly, we approve 224 hours for this portion of the County's request.

⁵⁵ *Id.*

⁵⁶ See ¶ 2, *supra*.

⁵⁷ County PRM at Exhibit B.

⁵⁸ *Id.*

⁵⁹ Sprint PRM App. 12 at 24.

⁶⁰ Sprint PRM at 16.

⁶¹ County PRM at 15-16.

⁶² *Id.* at Exhibit B.

⁶³ Sprint PRM, App. 11 at 1; RR at 20.

⁶⁴ *Id.*, App. 12 at 29.

⁶⁵ *Id.*, App. 12 at 28.

⁶⁶ *Id.*, App. 12 at 28-29.

27. With regard to the latter category of the County's project management cost estimate, the County estimates that a "considerable amount of time will be necessary to properly organize, educate, inform, solicit input from, and direct County stakeholders and elected officials" throughout the estimated reconfiguration planning phase."⁶⁷ We believe that educating County stakeholders and elected officials as to the importance of expeditiously completing this project is reasonably related to the administrative burdens imposed by 800 MHz rebanding. In that regard, we believe it is appropriate to budget a limited amount of time for the County to perform this task. Furthermore, we regard the County's proposed cost for this expense (approximately \$10,700) as *de minimis*. Under the *Rebanding Cost Clarification Order*, it is appropriate for Sprint to pay such costs rather than to spend more substantial resources on prolonged mediation over an otherwise *de minimis* cost estimate. Therefore, we approve this portion of the County's cost estimate.

D. Negotiation and Mediation Costs

28. *County Position.* The County seeks \$29,381.04 for time spent by Motorola, RCC and the County's internal staff on negotiation and mediation support, including 122 hours for the County's internal staff, 100.8 hours for RCC, and 18 hours for Motorola.⁶⁸

29. *Sprint Position.* Sprint contends that County staff should be credited for 60 hours and RCC for 28 hours, which would reduce the County's recovery to \$11,865.20.⁶⁹ Sprint states that during the mediation, it sought to present data showing that the County's funding request was disproportionately higher than funding requests in other cases on a cost-per-unit basis.⁷⁰ Sprint contends that the County showed "recalcitrance" in response to this line of argument advanced by Sprint, resulting in a substantial increase in mediation time and associated costs.⁷¹

30. *Mediator Recommendation.* The mediator found that the County's expenditures for negotiation and mediation support were reasonable.⁷² The mediator stated that the mediation process, while difficult, involved good faith efforts by all parties involved.⁷³

31. *Decision.* Based on the record, we believe the County's request for negotiation and mediation support is reasonable. We reject Sprint's argument that the protracted nature of mediation in this case was solely or primarily caused by the County. The record shows that Sprint's conduct was also a factor. For example, in response to County requests for information about cases that Sprint claimed were comparable, Sprint invoked confidentiality restrictions in its agreements with other licensees,⁷⁴ which delayed its responding to the County until the necessary approvals could be obtained.⁷⁵ Sprint has also conceded that prior to the issuance of the *Rebanding Cost Clarification Order*, its practice in negotiation was to routinely "challenge virtually every dollar spent on band reconfiguration to assure compliance with 'minimum cost.'"⁷⁶ Given that Sprint's conduct was at least as much a factor as the County's in

⁶⁷ *Id.*, App. 12 at 29.

⁶⁸ RR at 12.

⁶⁹ *Id.* Sprint does not propose to reduce Motorola's hours.

⁷⁰ Sprint PRM at 7.

⁷¹ Sprint SOP at 9.

⁷² RR at 22.

⁷³ *Id.*

⁷⁴ Such disputes over confidentiality led us to issue an order permitting public safety licensees to disclose the terms of PFAs and FRAs negotiated with Sprint. See Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Order*, 22 FCC Rcd 172 (PSHSB 2007).

⁷⁵ County PRM at 12 n. 19 and accompanying text.

⁷⁶ *Rebanding Cost Clarification Order*, 22 FCC Rcd at 9819 ¶ 3.

prolonging mediation, we find no basis to reduce the amount requested by the County for this cost category.

IV. ORDERING CLAUSES

32. Accordingly, pursuant to the authority of Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331; Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 90.677, of the Commission's Rules, 47 C.F.R. § 90.677, IT IS ORDERED that the issues submitted by the Transition Administrator are resolved as discussed above.

33. IT IS FURTHER ORDERED that the Transition Administrator shall convene a meeting of the parties within seven days of the date of this Order for the purpose of negotiating a Planning Funding Agreement consistent with the resolution of issues set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

David L. Furth
Associate Bureau Chief
Public Safety and Homeland Security Bureau